

§ 96.53

§ 96.53 Audit resolution generally.

The DOL official(s) responsible for audit resolution shall promptly evaluate findings and recommendations reported by auditors and the corrective action plan developed by the recipient to determine proper actions in response to audit findings and recommendations. The process of audit resolution includes at a minimum an initial determination, an informal resolution period, and a final determination.

(a) *Initial determination.* After the conclusion of any comment period for audits provided the recipient/contractor, the responsible DOL official(s) shall make an initial determination on the allowability of questioned costs or activities, administrative or systemic findings, and the corrective actions outlined by the recipient. Such determination shall be based on applicable statutes, regulations, administrative directives, or terms and conditions of the grant/contract award instrument.

(b) *Informal resolution.* The recipient/contractor shall have a reasonable period of time (as determined by the DOL official(s) responsible for audit resolution) from the date of issuance of the initial determination to informally resolve those matters in which the recipient/contractor disagrees with the decisions of the responsible DOL official(s).

(c) *Final determination.* After the conclusion of the informal resolution period, the responsible DOL official(s) shall issue a final determination that:

(1) As appropriate, indicate that efforts to informally resolve matters contained in the initial determination have either been successful or unsuccessful;

(2) Lists those matters upon which the parties continue to disagree;

(3) Lists any modifications to the factual findings and conclusions set forth in the initial determination;

(4) Lists any sanctions and required corrective actions; and

(5) Sets forth any appeal rights.

(d) *Time limit.* Insofar as possible, the requirements of this section should be met within 180 days of the date the final approved audit report is received by the DOL official(s) responsible for audit resolution.

29 CFR Subtitle A (7-1-03 Edition)

§ 96.54 Responsibility for subrecipient audits.

Recipients of Federal assistance from DOL are responsible for ensuring that subrecipient organizations who expend \$300,000 or more in a fiscal year are audited and that any audit findings are resolved in accordance with this part. The recipient shall:

(a) Determine whether appropriate audit requirements outlined in subpart A have been met;

(b) Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations;

(c) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of non-compliance with Federal law and regulations;

(d) Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

(e) Require that each subrecipient permit independent auditors to have access to the records and financial statements necessary to comply with this part.

Subpart F—Appeals

§ 96.61 Purpose and scope of subpart.

(a) The purpose of this subpart is to set forth procedures by which recipients and contractors may appeal final determinations by the DOL officials responsible for audit resolution as a result of audits.

(b) Subrecipients and subcontractors shall have only such appeal rights as may exist in subgrants or subcontracts with the respective recipients or contractors.

§ 96.62 Contracts.

(a) For the purpose of this subpart, the term "contract" includes all agreements described in sec. 602(a) of the Contract Disputes Act (Applicability of Law—Executive agency contracts) (41 U.S.C. 602(a)).

(b) Upon a contractor's receipt of the DOL contracting officer's final determination as a result of an audit, the contractor may appeal the final determination to the DOL Board of Contract Appeals, pursuant to 41 CFR part 29-60

and 48 CFR part 2933 or pursue such other remedies as may be available under the Contract Disputes Act.

§ 96.63 Federal financial assistance.

The DOL grantor agencies shall determine which of the two appeal options set forth in paragraphs (a) and (b) of this section the recipient may use to appeal the final determination of the grant officer. All awards within the same Federal financial assistance program shall follow the same appeal procedure.

(a) Appeal to the head of the grantor agency, or his/her designee, for which the audit was conducted.

(1) *Jurisdiction.* (i) *Request for hearing.* Within 21 days of receipt of the grant officer's final determination, the recipient may transmit, by certified mail, return receipt requested, a request for hearing to the head of the grantor agency, or his/her designee, as noted in the final determination. A copy must also be sent to the grant officer who signed the final determination.

(ii) *Statement of issues.* The request for a hearing shall be accompanied by a copy of the final determination, if issued, and shall specifically state those portions of the final determination upon which review is requested. Those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

(iii) *Failure to request review.* When no timely request for a hearing is made, the final determination shall constitute final action by the Secretary of Labor and shall not be subject to further review.

(2) *Conduct of hearings.* The grantor agency shall establish procedures for the conduct of hearings by the head of the grantor agency, or his/her designee.

(3) *Decision of the head of the grantor agency, or his/her designee.* The head of the grantor agency, or his/her designee, should render a written decision no later than 90 days after the closing of the record. This decision constitutes final action of the Secretary.

(b) *Appeal to the DOL Office of Administrative Law Judges.*

(1) *Jurisdiction.* (i) *Request for hearing.* Within 21 days of receipt of the grant

officer's final determination, the recipient may transmit by certified mail, return receipt requested, a request for hearing to the Chief Administrative Law Judge, United States Department of Labor, 800 K Street NW, Suite 400, Washington, DC 20001, with a copy to the grant officer who signed the final determination. The Chief Administrative Law Judge shall designate an administrative law judge to hear the appeal.

(ii) *Statement of issues.* The request for a hearing shall be accompanied by a copy of the final determination, if issued, and shall specifically state those portions of the final determination upon which review is requested. Those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

(iii) *Failure to request review.* When no timely request for a hearing is made, the final determination shall constitute final action by the Secretary and shall not be subject to further review.

(2) *Conduct of hearings.* The DOL Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, set forth at 29 CFR part 18, shall govern the conduct of hearings under paragraph (b) of this section.

(3) *Decision of the administrative law judge.* The administrative law judge should render a written decision no later than 90 days after the closing of the record.

(4) *Filing exceptions to decision.* The decision of the administrative law judge shall constitute final action by the Secretary of Labor, unless, within 21 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Secretary, specifically identifying the procedure or finding of fact, law, or policy with which exception is taken. Any exceptions not specifically urged shall be deemed to have been waived. Thereafter, the decision of the administrative law judge shall become the decision of the Secretary, unless the Secretary, within 30 days of such filing, has notified the parties that the case has been accepted for review.